

Remarks

Claim 8 has been amended to correct an error in dependency.
Claims 1, 10, 17 and 22 have been amended to correct antecedent basis.

The Examiner is respectfully requested to reconsider his provisional rejection on the grounds of double patenting with co-pending USA Application 10/548,926. All of the Claims of co-pending USA Application 10/548,926, as published in US 2006/0168636, recite a memory for recording digital data, and control means for enabling retrieval of said digital data from memory. Nowhere is this subject matter recited in the Claims of the instant application. It is therefore clear that the two applications are patentably distinct, and are therefore not subject to a double patenting rejection.

The Applicants acknowledge that the specifications of the instant application and of co-pending US Application 10/548926 are similar. However, such similarity does not affect any question of double patenting. Rather, any question of double patenting is answered only by consideration of the Claims. The Applicants submit that the Claims of the two applications are patentably distinct.

More specifically, the Claims of US Application 10/548,926 do not recite:

“receiving means for receiving a request signal from a device via a transmission medium connecting said apparatus and said device, wherein said processed analog signals are provided to said device via said transmission medium responsive to said request signal”,

as specifically recited in instant Claim 1. Also, the Claims of US Application 10/548,926 do not recite:

“control mean for dynamically detecting an available frequency band on said transmission medium, wherein said available frequency band is used to provide said processed analog signal to said device”,

as also specifically recited in the instant Claim 1. It is therefore clear that the instant Claim 1 is patentably distinct from the Claims of US Application 10/548,926.

Similarly, nowhere do the Claims of US Application 10/548,926 recite:

“receiving a request signal from said client device via a transmission medium connecting said gateway apparatus and said client device”,

and

“dynamically detecting an available frequency band on said transmission medium”,

as specifically recited in the instant Claim 10. It is therefore clear that the instant Claim 10 is patentably distinct from the Claims of US Application 10/548,926.

Similarly, nowhere do the Claims of US Application 10/548,926 recite:

“a back channel processor operative to generate a request signal response to a user input, wherein said request signal is provided to said apparatus via said transmission medium and causes said apparatus to provide said processed analog signals to said client device”,

and

“control means for dynamically detecting an available frequency band on said transmission medium, wherein said available frequency band is used to provide said processed analog signals to said device”,

as specifically recited in Claim 17. It is therefore clear that the instant Claim 17 is patentably distinct from the Claims of US Application 10/548,926.

Similarly, nowhere do the Claims of US Application 10/548,926 recite:

“a controller operative to dynamically detect an available frequency band on said coaxial cable, wherein said available frequency band is used to provide said processed analog signals to said client device”,

as specifically set forth in the instant Claim 22. It is therefore clear that the instant Claim 22 is patentably distinct from the Claims of US Application 10/548,926.

It is therefore clear that any issue of patentable distinctness of the instant Claims from the Claims of US Application 10/548,926 must be resolved in favor of the Applicants.

Additionally, both applications have the same priority date (11 March 2003), and both have the same effective filing date (9 March 2004 in PCT). It is therefore clear that a terminal disclaimer would be a nullity.

In Re Berg, 140 F³ 1438, cited by the Examiner, is not applicable to the instant application. Applications filed after 1995 now expire 20 years after their filing dates. Two applications filed on the same date are therefore not subject to a prohibition of an extension of the right to exclude.

The Examiner is requested to reconsider his rejection of Claims 1, 3-5, 7-10, 12-14, 16, 17, 19, 22-26 and 28-30 under 35 USC 102(e) as clearly anticipated by US 6,622,307 to Ho in view of US 6,493,873 to

Williams. This rejection is clearly improper, since 35 USC 102(e) is only applicable to anticipation by a single reference. The Applicants assume that the Examiner intended to reject these Claims under 35 USC 103.

Nowhere does Ho show or suggest:

“control means for dynamically detecting an available frequency band on said transmission medium”,

as specifically recited in Claim 1. Rather, Ho generates an RF-modulated signal that occupies any selectable frequency band or channel, as set forth in column 9, lines 15-22. It is therefore clear that Ho does not affect the patentability of Claim 1.

Similarly, nowhere does Ho show or suggest:

“dynamically detecting an available frequency band on said transmission medium”,

as specifically set forth in Claim 10. It is therefore clear that Ho does not affect the patentability of Claim 10.

Similarly, nowhere does Ho show or suggest:

“control means for dynamically detecting an available frequency band on said transmission medium”,

as specifically set forth in Claim 17. It is therefore clear that the patentability of Claim 17 as amended is not affected by Ho.

Similarly, nowhere does Ho show or suggest:

“a controller operative to dynamically detect an available frequency band on said coaxial cable, wherein said available frequency band is used to provide said processed analog signals to said client device”,

as specifically recited in Claim 22.

The Examiner has asserted that Ho discloses a control means for detecting an available frequency band on said transmission medium. The Applicants can not agree. Rather, in column 9, lines 36-39, Ho indicates that the video signal is converted to an unoccupied channel. Nowhere does Ho show or suggest any *detection* of an available frequency band on the transmission medium.

Williams performs a frequency scan of received terrestrial signals at turn-on, and stores the results in a non-volatile memory. See column 12, lines 1-3. Nowhere does Williams dynamically detect an available frequency band *on a transmission medium*. Rather, in column 11, lines 45-48, Williams specifically indicates at line 48, upon which terrestrial signals are received, is scanned to determine which frequencies to use as carrier frequencies for the selected ones of the transmodulated signals. It is therefore clear that even if the structures of Ho and Williams were to be combined, the patentability of the instant Claims would not be affected.

Subclaims 6, 15 and 21 have been rejected under 35 USC 103 as unpatentable over Ho in view of US 6,622,307 to Ehreth. Ho has been discussed above. Nowhere does Ehreth show or suggest any means for dynamically detecting an available frequency band on a transmission medium, as recited in parent Claims 1, 10 and 17, as amended. The Examiner has not alleged any such suggestion in Ehreth. It is therefore clear that Ehreth does not affect the patentability of Claims 1, 10 to 17 and 22, much less the patentability of subclaims 6, 15 and 21.

Claims 3-5, 7-9, 29 and 30 are dependent from Claim 1 and add further advantageous features. The Applicants submit that these subclaims are patentable as their parent Claim 1.

Similarly, Claims 10, 12-14 and 16 are dependent from Claim 10 and add further advantageous features. The Applicants submit that these subclaims are patentable as their parent Claim 10.

Similarly, Claims 18-21 are dependent from Claim 17 and add further advantageous features. The Applicants submit that these subclaims are patentable as their parent Claim 17.

Similarly, Claims 23-26 and 28 are dependent from Claim 22 and add further advantageous features. The applicants submit that these subclaims are patentable as their parent Claim 22.

The Examiner has additionally cited US 6,481,013 to Dinwiddie et al against subclaims 2, 11 and 18. Although Dinwiddie et al relates to a coaxial network distribution system, nowhere does Dinwiddie et al show or suggest a controller operative to dynamically detect an available frequency band on a coaxial cable. The Examiner appears to agree. It is therefore clear that even if the structures of Dinwiddie et al, Ho, and Williams were to be combined, the patentability of the instant Claims would not be affected.

The Examiner has additionally cited US 6,286,142 to Ehreth against subclaims 6, 15, 21, and 27. Although Ehreth shows a video communication system, nowhere does Ehreth show or suggest a controller operative to dynamically detect an available frequency band on a coaxial cable. It is therefore clear that even if the structures of Ehreth, Dinwiddie et al, Ho and Williams were to be combined, the patentability of the instant Claims would not be affected.

Claims 2-9, 29 and 30 are dependent from Claim 1 and add further advantageous features. The Applicants submit that these subclaims are patentable as their parent Claim 1.

Similarly, Claims 11-16 are dependent from Claim 10 and add further advantageous features. The Applicants submit that these subclaims are patentable as their parent Claim 10.

Similarly, Claims 18-21 are dependent from Claim 17 and add further advantageous features. The Applicants submit that these subclaims are patentable as their parent Claim 17.

Similarly, Claims 23-28 are dependent from Claim 22 and add further advantageous features. The Applicants submit that these subclaims are patentable as their parent Claim 22.

No fee is believed to have been incurred by virtue of this response, other than the fee for the extension of time. However, if a fee is incurred, please charge such fee against the Applicants' Deposit Account No. 07-0832.

The Applicants submit that the Application is now in condition for allowance. A notice to that effect is respectfully solicited.

Respectfully submitted,
Michael Anthony Pugel
Douglas Edward Lankford
John Joseph Curtis III
Keith Reynolds Wehmeyer
Mike Arthur Derrenberger
Terry Wayne Lockridge
Andrew Eric Bowyer

by: /Catherine A. Cooper/
Catherine A. Cooper
Attorney for Applicant
Registration No. 40, 877
609/734-6440

THOMSON Licensing LLC
Patent Operation
PO Box 5312
Princeton, NJ 08543-5312

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